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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and for the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

EMPIRE PROSPECT PARTNERSHIP, LP; and
JOSEF MITTELMANN, individually and as General
Partner of Empire Prospect Partnership, LP,

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04404 (SMB)

**STIPULATION AND ORDER FOR VOLUNTARY
DISMISSAL OF ADVERSARY PROCEEDING WITHOUT PREJUDICE**

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the substantively consolidated estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, and Empire Prospect Partnership, LP and Josef Mittlemann, individually and as General Partner of Empire Prospect Partnership, LP (“Defendants”), by and through their counsel, Michael I. Goldberg of Akerman LLP (collectively, the “Parties”), hereby stipulate and agree to the following:

1. On November 30, 2010, the Trustee filed and served the Complaint against Defendants.
2. On September 17, 2015, Defendants served an answer on the Trustee.
3. On April 7, 2017, the Parties entered into a settlement agreement pursuant to the Settlement Procedures Order, entered by this Court on November 12, 2010 [Dkt. No. 3181].
4. In accordance with Federal Rule of Bankruptcy Procedure 7041(a)(1)(ii), and Federal Rule of Civil Procedure 41(a)(1), the Parties hereby stipulate to a dismissal without prejudice of the Trustee’s claims against Defendants in the above-captioned adversary proceeding and dismissal of the adversary proceeding without prejudice, subject to the right of the Trustee to move *ex parte* to re-open this adversary proceeding in the event of an uncured default under the terms of the Settlement Agreement. Upon the Trustee’s receipt of the full Settlement Amount as set forth in the Settlement Agreement, and provided there is no default under the Settlement Agreement, this dismissal shall be deemed with prejudice.
5. The provisions of this Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.

6. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of this Stipulation shall be deemed an original.

New York, New York
April 12, 2017

By: /s/ Nicholas J. Cremona
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SO ORDERED

Dated: April 12, 2017
New York, New York

/s/ STUART M. BERNSTEIN
HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE